



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000
April 29, 2005

REGISTERED MAIL - RR 359 893 540 US

Snohomish County Public Works
Attn: Engineering Services Division
2930 Wetmore Avenue
Everett, WA 98201

Dear Sir or Madam:

RE: Order #2292
U.S. Army Corps Reference No. 200400810
Water Quality Certification/Coastal Zone Consistency Determination for Snohomish
County Public Works, Widening of Beverly Park Road and 112th Street SW, York Creek
and headwater streams and wetlands, Snohomish County, Washington

The request for certification for proposed work in and adjacent to York Creek has been reviewed. On behalf of the State of Washington, we certify that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This letter also serves as the State response to the Corps of Engineers.

Pursuant to 16 U.S.C. 1456 et. seq. (Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended), Ecology concurs with the applicant's determination that this work will be consistent with the approved Washington State Coastal Zone Management Program. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the Coastal Zone Management Program, including Section 401 of the Federal Water Pollution Control Act.

This certification is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Rebekah Padgett at (425) 649-7129. Written comments can be sent to her at the Department of Ecology, 3190 160th Avenue SE, Bellevue, WA 98008, or at rp461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Jeannie Summerhays
Section Manager
Shorelands and Environmental Assistance Program

JS:rc



IN THE MATTER OF GRANTING A)	ORDER # 2292
WATER QUALITY)	Corps Reference No. 200400810
CERTIFICATION TO)	Widening of Beverly Park Road and 112th Street
Snohomish County Public Works)	SW and replacement or extension of cross
in accordance with 33 U.S.C. 1341)	culverts, York Creek and headwater streams and
FWPCA § 401, RCW 90.48.120, RCW)	wetlands; placement of fill in 1.51 acres of
90.48.260 and Chapter 173-201A WAC)	wetlands; Everett, Snohomish County,
)	Washington.

TO: Snohomish County Public Works
 Attn: Engineering Services Division
 2930 Wetmore Avenue
 Everett, WA 98201

On March 17, 2005, a public notice for a proposed water quality certification from the State of Washington was distributed for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA §401). The proposed project consists of widening the existing two-lane roadway to two lanes in each direction and a center-turn lane, with turn lanes at intersections. Three cross culverts will be replaced and one culvert extended. A total of 1.51 acres of wetlands will be filled during project construction.

Compensatory wetland mitigation includes 2.7 acres of wetland creation and restoration, 5.8 acres of preservation, and 0.2 acres of enhancement. Most of the mitigation will be provided off-site adjacent to Swamp Creek.

AUTHORITIES:

For purposes of this Order, the term "Applicant" shall mean Snohomish County Public Works and its agents, assigns, and contractors.

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has investigated this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 303, 306 and 307);
2. Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other appropriate requirements of state law; and
3. Conformance with the provision of using known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

CONDITIONS OF ORDER #2292 AND WATER QUALITY CERTIFICATION:

In view of the foregoing and in accordance with 33 U.S.C. 1341, RCW 90.48.120, RCW 90.48.260, and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the following conditions:

A. No Impairment of Water Quality:

- A1. Certification of this proposal does not authorize Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3). Furthermore, nothing in this certification shall absolve Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

B. Project Mitigation:

- B1. Impacts to wetlands and aquatic resources shall be mitigated through measures described in the following documents, except as modified by this Certification and Order, and including any approved revisions:
- Plan Sheets MIT 1 through MIT 6, signed and stamped by the Snohomish County Engineer on March 21, 2005, titled 112th St. SW SR 525 to Airport Road: York Creek Mitigation Site Grading Plan, Sections and Profile, Planting Plan; York Creek Stream Relocation @ Beverly Park Road, Mitigation Site @ Beverly Park Road, Planting Details and List
 - Project Specifications, especially Staging Areas – Material Handling and Storage; Order of Work; Pond, Wetland and Stream Channel Excavation Including Haul; Wetland Mitigation and Stream Realignment Construction; Temporary Irrigation System
 - Swamp Creek Mitigation, Sheet 12 of JARPA, June 2004
 - Swamp Creek Mitigation Site Plant quantities, undated
 - Mitigation Goals, Objectives and Performance Standards for York Creek and Swamp Creek, from Section 5.2, Final Critical Areas Study, Sno Co DPW, revised January 2005
 - Monitoring, Section 6.1, Final Critical Areas Study, Sno Co DPW, revised January 2005
 - Maintenance, Section 6.2, Final Critical Areas Study, Sno Co DPW, revised January 2005, and November 8, 2004 cover letter, item 7 addressing mitigation site maintenance
 - Contingency Measures, Table 6-1, Final Critical Areas Study, Sno Co DPW, revised January 2005

B2. In addition to mitigation measures described in the above-referenced documents, the following requirements shall be conditions for all mitigation sites:

- Preconstruction Meeting: The applicant's wetland ecologist assigned to oversee wetland mitigation construction shall be present at the pre-construction meeting for the project.
- Timing: The wetland mitigation plan shall be implemented concurrently with the site construction for the development.
- Record Report and Drawings: A report documenting the final design of the mitigation project areas shall be prepared when site construction and planting is completed. The report shall include the following:
 - Vicinity map showing site access;
 - Final site topography;
 - Hydrologic design for mitigation sites;
 - Drawings that clearly identify the boundaries of the mitigation areas;
 - The installed planting scheme showing densities, sizes, and locations of plants, as well as plant sources and the time of planting;
 - Photographs of the area taken from permanent reference points;
 - Locations of photopoints, sampling and monitoring sites;
 - An analysis of any changes to the mitigation plan that occurred during construction.

A copy of the Record Report shall be sent to Rebekah Padgett at Ecology within 60 days of completing construction, and in no case later than December 31, 2006. The project monitoring period shall commence with Ecology's acceptance of the Record Report.

- Field Supervision: The wetland mitigation grading activity and plant installation shall be field-supervised by a qualified wetland ecologist to ensure proper elevations are achieved and plants are appropriately placed.
- Permanent Protection: The applicant shall provide documentation showing the means of permanent protection for the mitigation sites (such as a conservation easement, property deed showing County ownership, or similar) to Rebekah Padgett at Ecology within 60 days of completing construction, and in no case later than December 31, 2006.
- Performance Standards: The performance of the wetland mitigation listed in Section 5.2, Final Critical Areas Study, revised January 2005, shall be assessed by an appropriate quantitative vegetative cover field assessment methodology as described in Section 6.1.1, Final Critical Areas Study, revised January 2005.

- **Monitoring:** Monitoring to insure that the project performance standards are met shall be performed as described in Section 6, Final Critical Areas Study, revised January 2005. In addition, monitoring shall take place over a period of ten years, with monitoring performed in years 1, 2, 3, 5, 7 and 10. **Copies of all monitoring reports shall be submitted to Ecology at 3190 – 160th Avenue SE, Bellevue, WA, 98008-5452**, as well as to the U.S. Army Corps of Engineers. The monitoring reports should indicate Ecology Order #2292, U.S. Army Corps #200400810.
- **Maintenance:** Maintenance of the wetland mitigation sites is necessary to insure that the required performance standards are met. Maintenance shall be performed as described in Section 6.2, Final Critical Areas Study, revised January 2005, and Snohomish County letter of November 8, 2004, item 7. Irrigation will be required from June through Mid-October for the first growing season following plant installation, to insure a minimum of one inch of water per week. Irrigation will not be necessary on those weeks where rainfall at the site exceeds one inch per week. Maintenance will also include removal of non-native invasive species as needed throughout the wetland mitigation sites.
- **Contingency Measures:** The applicant is responsible for the success of the mitigation measures. Table 6-1, Contingency Measures for the Mitigation Sites, Final Critical Areas Study, revised January 2005, describes possible solutions that would be implemented if some aspects of the mitigation sites do not meet the performance standards.
- **Access:** The Applicant shall provide access to the mitigation sites upon request by Ecology personnel for site inspections, monitoring, and necessary data collection to ensure that the wetland construction and monitoring plans are implemented as approved.

C. Stormwater Management:

- C1. **Construction Stormwater and Erosion Control:** Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment and erosion control Best Management Practices suitable to prevent exceedances of state water quality standards (*e.g.*, detention areas, filter fences, etc.), shall be in place before starting clearing, filling, and grading work at the impact sites, and shall also comply with all requirements of the NPDES Permit.
- C2. All permanent stormwater facilities must be designed to comply with the Stormwater Management Manual for Western Washington, August 2001, or an equivalent manual.
- C3. Stormwater treatment facilities are to be maintained so they function as designed.

D. Construction:

- D1. Prior to clearing and grading in or near wetlands, the wetlands to remain undisturbed shall be protected from construction impacts. Bright orange construction fencing shall be installed prior to site clearing to mark the edge of the existing wetlands and stream channels to be protected. All project staff shall be trained to recognize the construction fencing that identifies wetland boundaries. Equipment shall not be moved into or operated in wetlands or stream channels that are not authorized to be altered.
- D2. During clearing and filling at the project site, the Applicant shall take all necessary measures to minimize the alteration or disturbance of existing wetland and upland vegetation.
- D3. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- D4. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
- D5. Clean Fill Criteria: Applicant shall ensure that fill placed for the proposed project does not contain toxic materials in toxic amounts.

E. Emergency/Contingency Measures:

- E1. In the event Applicant is unable to comply with any of the permit terms and conditions due to any cause, Applicant shall:
- Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
 - Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (425) 649-7000, and within 24 hours to Ecology's Rebekah Padgett at (425) 649-7129.
 - Submit a detailed written report to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

- E2. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters. No refueling of equipment shall occur over, or within 50 feet of creeks or wetlands.

F. Notification

- F1. Applicant shall provide notice to Ecology's Rebekah Padgett at least 3 days prior to the start of placing fill in wetlands or other waters of the state. Notification can take place by e-mail to rpad461@ecy.wa.gov, telephone to (425) 649-7129, fax to (425) 649-7098, or in writing.

G. General Conditions:

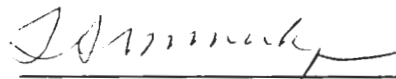
- G1. This certification does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
- G2. Applicant will be out of compliance with this certification if the project is constructed and/or operated in a manner not consistent with the project description contained in the Public Notice for certification, or as otherwise approved by Ecology. Additional mitigation measures may be required through other local, state, or federal requirements.
- G3. Applicant will be out of compliance with this certification and must reapply with an updated application if five years elapse between the date of the issuance of this certification and the beginning of construction and/or discharge for which the federal license or permit is being sought.
- G4. Applicant will be out of compliance with this certification and must reapply with an updated application if the information contained in the Public Notice is voided by subsequent submittals to the federal agency. Any future action at this project location, emergency or otherwise, that is not defined in the Public Notice, or has not been approved by Ecology, is not authorized by this Order. All future actions shall be coordinated with Ecology for approval prior to implementation of such action.
- G5. This Order is valid until all compliance requirements in this document have been met.
- G6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and foremen, and state and local government inspectors. To avoid violations or non-compliance with this Order, Applicant shall ensure that project managers, construction superintendents, and other responsible parties have read and understand relevant aspects of this Order, the NPDES permit if applicable, and any subsequent revision or Ecology-approved plans.

- G7. Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are being met.
- G8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.
- G9. Liability: Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing noncompliance.

Appeal Process:

Any person aggrieved by Order #2292 may obtain review thereof by appeal. Pursuant to Chapter 43.21B, RCW, a person can appeal this order to the Pollution Control Hearings Board within 30 days of the date of receipt of this Order. Any such appeal must be sent to the Washington Pollution Control Hearings Board, PO Box 40903, Olympia, WA 98504-0903. Concurrently, a copy of the appeal must be sent to the Department of Ecology, Shorelands and Environmental Assistance Program, Attn: Loree' Randall, PO Box 47600, Olympia, WA 98504-7600. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

Dated 4/29/05 at Bellevue, Washington.



Jeannie Summerhays, Section Manager
Shorelands and Environmental Assistance
Program
Department of Ecology
State of Washington